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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 929

RONEL CORPORATION, *Petitioner*,

v.

ANCHOR LOCK OF FLORIDA, INC., GUSTAV L. VICTOR, S. HOWARD BANASZAK, HERMAN KOBRIN, CHESTER LEVINE, *Respondents*.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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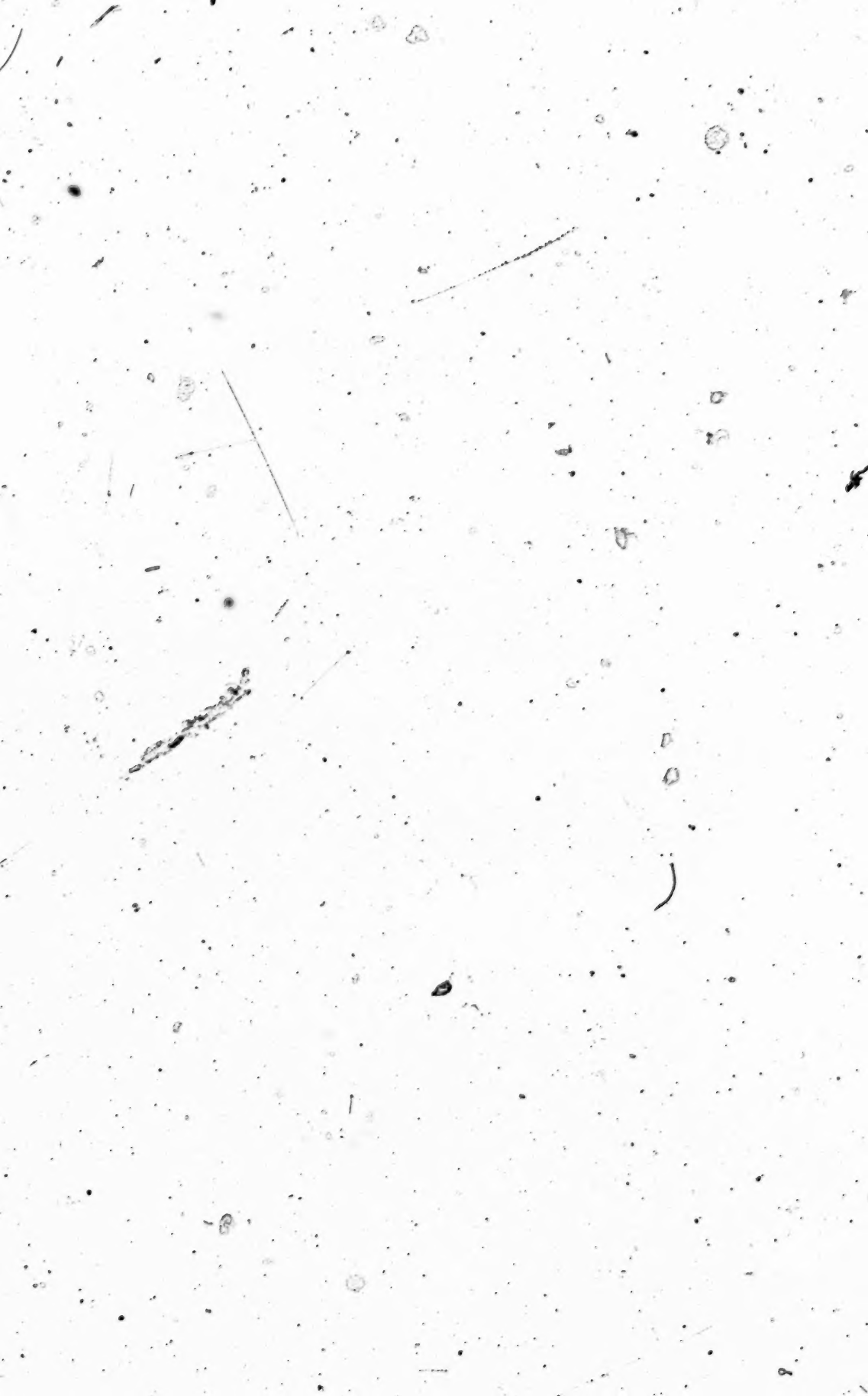

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CORRECT STATEMENT OF PROCEEDINGS BELOW

The decision of the United States Circuit Court of Appeals for the Fifth Circuit, December 20, 1963, 325 F. 2d 889, which Petitioner asks this Court to review, affirmed the Amended Partial Summary Final Judgment of the United States District Court, Southern District of Florida, February 25, 1963, appearing on pages 6 and 7 of the record of Appeal No. 20,505 and reproduced as Respondents' Appendix A hereto.

The decision of the United States Court of Appeals for the Fifth Circuit in Appeal No. 19,518 reported in 312 F. 2d 207 dismissed the appeal from Partial Summary Final Judgment of the United States District Court, Southern District of Florida, September 28, 1961, 198 F. Supp. 660, Petitioner's Appendix B, and is of no concern here.

QUESTIONS PRESENTED

Should this Court review partial summary judgment determining that a patent in suit is invalid where the patent claims and the prior art are so simple and readily understandable that expert testimony is unnecessary?

The Lidsky patent in suit is a simple mechanical patent with a single sheet of drawings and a single claim. The Lidsky patent and the prior art Saltzkorn et al. patent held to anticipate both are concerned with metal plates having projecting barbs for securing members together.

The crux of the decision of the Fifth Circuit Court of Appeals respecting this question is stated as follows:

> "It is apparent to us that the trial court could, by observation of the two devices, readily arrive at the conclusion reached by it. The court could not be aided by the affidavits of any number of experts pro or con in reaching this conclusion. This, therefore, presented such a situation as was under consideration by the Court of Appeals for the Sixth Circuit in the Bobertz case (i.e. *Bobertz v. General Motors*, 228 F. 2d 94) in which the Court said:
>
> > 'Where no factual issues are present and where the patents and products involved are

> sufficiently simple to make expert testimony unnecessary, disposition under Rule 56 is proper.' "

PETITIONER'S REASONS FOR SEEKING CERTIORARI ARE UNFOUNDED

Petitioner alleges four reasons in support of its request for certiorari none of which is applicable here. This is but an ordinary simple patent infringement case where the patent has been summarily invalidated upon ample precedent and there are no special and important reasons for review as required by Court Rule 19.

ARGUMENT

Cases like the instant case are not new to this Court. This Court denied certiorari, 352 U.S. 917, in another very similar simple patent case, *Vermont Structural Slate Co.* v. *Tatko Bros. Slate Co.*, 2 Cir., 233 F. 2d 9, from which the decision of the Fifth Circuit Court of Appeals in this case quotes as follows:

> "Summary judgment represents a most useful legal invention to save time and expense, by the avoidance of a trial, when there exists no material fact-issues. It may well be that, in a patent case, a judge should exercise unusual caution in granting a summary judgment. But there are patent cases where it would be an absurd waste of time and effort to deny such a judgment. This is such a case.
>
> "In many a patent suit, there arise issues of fact as to which the testimony of expert witnesses may be important. Then the credibility of those witnesses is crucial, and it would be erroneous, by a summary judgment, to deprive either party of a 'live trial' at which the trial court could observe

> the witnesses' demeanor in evaluating their testimony. There was no such issue here. *The prior art and the patent claims are, without expert aid, easily understandable by any one of the most modest intelligence. Nor did it require expert testimony to make it plain that the differences between the prior art and the patent claims were obvious to persons having ordinary skill in the trade at the time the alleged invention was made.*" (italics added)

This Court also denied certiorari, 361 U.S. 884, in *Glagovsky* v. *Bowcraft Trimming Co. et al.*, 4 Cir., 267 F. 2d 479, which affirmed summary judgment holding a patent invalid, stating:

> "The prior art and the patent claims are so simple that they can be readily understood by any normally intelligent person without the aid of expert testimony. There was, therefore, no error below in disposing of the plaintiff's suit on the motions for summary judgment and their supporting affidavits, depositions and exhibits."

The *Tatko* decision, *supra*, was cited with approval and the above italic language quoted in part by the First Circuit Court of Appeals in *George P. Congress & Co., Inc.* v. *Polaroid Corporation et al.*, 242 F. 2d 116, also affirming summary judgment holding a simple mechanical patent invalid over prior art.

The above italic language of *Tatko*, *supra*, was also quoted in full by the Court of Appeals for the District of Columbia Circuit in *Rothe* v. *Ford Motor Company*, 253 F. 2d 353, in affirming summary judgment holding a patent invalid.

The *Tatko* decision, *supra*, has also been cited with approval by other Circuit Courts of Appeals, among

them. *Rankin et al* v. *King et al.*, 9 Cir., 272 F. 2d 254; *Tatko Brothers Slate Co., Inc.* v. *Capitol Slate Co., Inc. et al.*, 3 Cir. (Feb. 17, 1964) 327 F. 2d 984, 140 USPQ 531, and *Fromberg, Inc.* v. *Gross Manufacturing Company, Inc.*, 9 Cir., (Feb. 26, 1964) F. 2d , 140 USPQ 641, all affirming summary judgment in patent cases.

CONCLUSION

Adequate reasons for review are lacking in this case.

This Court has established precedent, the *Tatko* and *Bowcraft* cases, *supra*, for denying certiorari in this case.

The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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APPENDIX A

Amended Partial Summary Final Judgment

Filed Feb. 25, 1963.

United States District Court, Southern District of Florida, Miami Division.

No. 10,672-M-Civil

RONEL CORPORATION, *Plaintiff*,

v.

ANCHOR LOCK OF FLORIDA, INC., GUSTAV L. VICTOR, S. HOWARD BANASZAK, HERMAN KOFRIN AND CHESTER LEVINE, *Defendants*.

This matter having come on before the Court, upon the Motions for Summary Judgment in the issue of validity and infringement of the Plaintiff's Patent No. 2,973,378, entitled Metal Fastener, and the Court having considered said Motions, the Affidavit filed in support thereof, and the Memoranda of counsel, and being fully informed in the premises, it is thereupon,

Ordered and Adjudged:

That the Court expressly determines that there being no just reason for delay, the Court expressly directs that Partial Summary Final Judgment be and the same is hereby entered in favor of the Defendants and against the Plaintiff pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, and pursuant thereto, the Court does hereby find that the Plaintiff's above-cited patent construes merely an improvement and application of the principle and teachings of that certain patent issued to Emil Saltzkorn and Ludwig Nicholai on May 15, 1900, No. 649,761, Eyelet, to a new use which does not rise to the dignity of invention, but is in fact an application of the original Salzkorn idea. It, therefore, follows and the Court finds that the patent here in suit is invalid and consequently cannot be infringed.

This Order amends and supersedes the Order previously entered on the 28th day of September, 1961.

Done and Ordered at Miami, Florida, this 18 day of February, 1963.

EMETT C. CHOATE,
United States District Judge.

Certificate of Service

It is hereby certified that copies of the foregoing Respondents' Brief in Opposition to Petition for Certiorari have been forwarded by first class mail postage prepaid to Henry L. Burkitt, 19 West 44th Street, New York, New York 10036 and Harold J. Kaplan, Robert L. Pearlman, Blum, Moscovitz, Friedman, Blum & Kaplan, 555 Madison Avenue, New York, New York 10022 and by air mail postage prepaid to Shapiro and Fried, Mercantile National Bank Building, 420 Lincoln Road, Miami Beach, Florida, attorney for Petitioner.

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Dated: April , 1964